

Exhibit 355

United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al.
v. Dey, Inc., et al., Civil Action No. 05-11084-PBS

**Exhibit to the August 28, 2009 Declaration of Sarah L. Reid in Support
of Dey's Opposition to Plaintiffs' Motion for Partial Summary Judgment**

NO. GV002327

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THE STATE OF TEXAS) IN THE DISTRICT COURT
 ex rel.)
 VEN-A-CARE OF THE)
 FLORIDA KEYS, INC.,)
 Plaintiff(s),)
)
 VS.) TRAVIS COUNTY, TEXAS
)
 DEY, INC.; ROXANE)
 LABORATORIES, INC., WARRICK)
 PHARMACEUTICALS CORPORATION,)
 SCHERING CORPORATION,)
 SCHERING-PLOUGH CORPORATION,)
 LIPHA, S.A., MERCK-LIPHA,)
 S.A., MERCK, KGAA, and EMD)
 PHARMACEUTICALS, INC.,)
 Defendant(s).) 53RD JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF
 CARRIE-JEAN JACKSON
 April 18th, 2003

ORAL AND VIDEOTAPED DEPOSITION OF CARRIE-JEAN JACKSON, produced as a witness at the instance of the Defendant(s), and duly sworn, was taken in the above-styled and numbered cause on April 18th, 2003, from 9:08 a.m. to 1:03 p.m., before Cynthia Vohlken, CSR in and for the State of Texas, reported by machine shorthand, at the Sacramento Marriott Rancho Cordova, 11211 Point East Drive, Rancho Cordova, California pursuant to the Texas Rules of Civil Procedure.

A P P E A R A N C E S

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1 A. Right.
 2 **Q. And this letter states, does it not, that,**
 3 **quote, this will advise you that your application for**
 4 **inclusion of the drug Cromolyn sodium inhalation USP**
 5 **on the list of drug products for which the Texas**
 6 **drug -- Texas Vendor Drug Program will reimburse**
 7 **pharmacies on Medicaid prescriptions has been**
 8 **approved, close quote?**

9 A. That is correct.

10 **Q. So the application was approved one day after**
 11 **the price lists were submitted; is that correct?**

12 A. It seems to be that way, yes. And it looks
 13 like they backdated the approval to May 2nd.

14 **Q. The Vendor Drug Program?**

15 A. Yes. It says the effective date for this
 16 approval is May 2nd. She dated it May 18th. So it
 17 looks like they backdated it to when possibly after --
 18 right after they received the April 27th letter.

19 **Q. So it was made retroactively effective?**

20 A. I interpret that to be retroactive to May 2nd
 21 of 1994.

22 **Q. Retroactive after they received the price**
 23 **lists, right?**

24 A. Right. After they received the price lists
 25 she said, okay, well, it's approved as of May 2nd.

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1 **Q. Thank you. Now I'd like to mark as the next**
 2 **exhibit in order a letter dated August 31, 1993, which**
 3 **appears to be from Ms. Jackson to Martha McNeill.**

4 MR. PRESCOTT: I'm sorry, I don't have
 5 extra copies to this one, but let's pass it around.
 6 (Exhibit 880 marked)

7 **Q. (BY MR. PRESCOTT) Ms. Jackson, I'll show you**
 8 **the document we just marked Exhibit 880. The copy is**
 9 **a little faint, but is that -- does that appear to be**
 10 **your signature on there?**

11 A. It appears to be.

12 **Q. Upper lower right?**

13 A. Uh-huh.

14 **Q. Is this the letter that you sent to Martha**
 15 **McNeill on or about August 31, 1993?**

16 A. It looks to be, yes.

17 **Q. And -- and you did this at a time when you**
 18 **were holding the position of contract department**
 19 **coordinator --**

20 A. Yes.

21 **Q. -- at Dey?**

22 A. Yes.

23 **Q. Was this -- was it part of your duties in**
 24 **that position to send letters such as this?**

25 A. That was not my main focus. My main focus

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1 was contract related.

2 **Q. Would you have -- before sending this out**
 3 **have obtained the approval of anyone else at Dey**
 4 **before sending it out?**

5 A. I would have been told to send it out, run it
 6 by probably at that time might have been either Bob or
 7 Mark at that point.

8 **Q. Meaning Bob Mozak or Mark Pope?**

9 A. Mark, exactly. And getting approval to send
 10 it out.

11 **Q. And directing your attention to the first**
 12 **sentence in the second paragraph of Exhibit 880. Did**
 13 **you on the date of this letter write to Ms. McNeill,**
 14 **quote, many of our customers are Medicaid providers**
 15 **and request reimbursement information when making a**
 16 **purchasing decision, close quote?**

17 A. Yes.

18 **Q. And did you also on this same date and in**
 19 **this letter write, quote, in order to provide them**
 20 **with the best possible service we periodically request**
 21 **this information from each Medicaid carrier, close**
 22 **quote?**

23 A. Yes.

24 **Q. I'm going to show you a document that's been**
 25 **previously marked Mozak Deposition Exhibit 561. And**

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1 **do you recognize this?**

2 A. From previous copies you've submitted, yes.

3 **Q. Are these your handwritten initials in the**
 4 **top center?**

5 A. Those are my initials.

6 **Q. Is this a memorandum you prepared on or about**
 7 **August 12, 1994?**

8 A. Yes, it looks to be.

9 **Q. And did you send it to the people indicated**
 10 **on here?**

11 A. I would have either dropped it off on their
 12 desk -- these were -- Mari was in-house, but Alberto
 13 and Ross were outside, so I put -- would put it in
 14 interoffice mail type of thing, the weekly mail to
 15 them.

16 **Q. Now, on the first line of the body of the**
 17 **memo it refers to your having spoken with Jerry Wells**
 18 **at Florida Medicaid.**

19 A. Uh-huh.

20 **Q. Do you -- do you recall -- strike the**
 21 **question.**

22 **Does this memorandum, to the best of**
 23 **your knowledge, set forth what you and Mr. Wells**
 24 **discussed?**

25 A. Yes. It looks like it -- it would have. It

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1 was just relaying to Alberto, Ross, Helen and Bob my
2 discussion with Jerry.
3 **Q. And the memorandum was an accurate recitation**
4 **of what Mr. Wells had told you to the best of your**
5 **ability?**

6 A. To the best of my knowledge. Of course, I
7 wouldn't have my hand notes, but that looks to be the
8 best.

9 **Q. Apart from what is set forth in this**
10 **memorandum do you have any recollection of that**
11 **conversation with Mr. Wells?**

12 A. I honestly cannot say.

13 **Q. Do you recall discussing this memorandum with**
14 **any of the people listed on it?**

15 A. No. When things like this would happen I
16 would pass the memo over to -- to distribution and
17 look for them to return the call to Jerry to discuss
18 further.

19 **Q. Did anyone ever report back to you that he or**
20 **she had talked with Jerry Wells about the subject**
21 **matter of this?**

22 A. I don't recollect.

23 **Q. I'm going to show you a document we've**
24 **previously marked Deposition Exhibit 342.**

25 MR. PRESCOTT: And again, I'm sorry, I

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1 only have one copy, so I will pass this around. It
2 does have my highlighted yellow on the first page.
3 **Q. (BY MR. PRESCOTT) Ms. Jackson, I'm going to**
4 **ask you to look through Deposition Exhibit 342 and**
5 **tell me if you recognize it or any part of it. Please**
6 **take your time. It's multipage. Take your time and**
7 **look through it.**

8 A. (Witness reviewing document). I don't
9 remember seeing this, but this was after I left the
10 company dated 12/4 of '95.

11 **Q. So this handwriting on the first page that**
12 **says done 12/14/1995 (sic), that is certainly not**
13 **yours?**

14 A. Huh-uh. No.

15 **Q. That was my question. Thank you. I'm going**
16 **to show you a document that's been previously marked**
17 **Deposition Exhibit 230. It's a number of pages long,**
18 **so take your time and look through it.**

19 A. (Witness reviewing document). I remember
20 doing this document.

21 **Q. Did you prepare this document on or about the**
22 **date it bears, which is August 12, 1993?**

23 A. It's familiar, yes.

24 **Q. And those are your handwritten initials on**
25 **this page?**

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1 A. Yes, those are my initials.

2 **Q. How did you gather the information -- well,**
3 **let me step back. What is the document?**

4 A. It's a report to distribution, which is on
5 the back, giving the status of Medicare and/or
6 Medicaid for each individual state. How I compiled
7 the individual information I don't remember, but I was
8 tasked with providing this report on a periodic basis,
9 updating it as required showing the different states
10 and their requirements and that type of thing.

11 **Q. And who asked you -- did someone ask you to**
12 **do this at Dey?**

13 A. Since it's cc'd to Helen, I would cc my --
14 the requester, although I was more than likely
15 reporting to -- August of '93, I don't recall
16 reporting to Helen, but I cc'd her, so that would mean
17 she was the requester.

18 **Q. Okay. Did you have any understanding as to**
19 **why you were being asked to do this?**

20 A. I don't remember now how much in-depth
21 knowledge I had back then, to be honest. I'm sure I
22 had a general sense of what the request was. I don't
23 recall how much in-depth I knew back then.

24 **Q. I'm going to ask you similar questions about**
25 **a document previously marked Deposition Exhibit 231.**

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1 **Is this a document you prepared on or about February**
2 **2, 1994?**

3 A. Yes.

4 **Q. Those are your initials on it?**

5 A. Yes.

6 **Q. And does this -- does looking at this**
7 **document help you to remember how you gathered the**
8 **information?**

9 A. What it does bring to mind, as I remember,
10 there was a period of months there from August '93 to
11 February of '94 where they had wanted this report
12 periodically, more frequent than six months here, and
13 the focus -- I was put on other things, you know, with
14 conventions and that type of thing, so I was unable to
15 get to it and I remember there was a length of time
16 where Helen had asked me, "Okay. Carrie, can you
17 update this?" How I gathered the information, there
18 again, I don't remember.

19 **Q. Okay.**

20 A. So... I remember it was a lot of work and
21 she said, "Well, we are going to do it on an as-needed
22 basis from now on."

23 **Q. As you sit here today do you have any**
24 **understanding as to why you were being asked to do**
25 **this?**

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1 A. Just to update if there were any dollar
2 changes or procedure changes at the individual states.
3 I didn't -- at that point I did not know what
4 distribution would be with this information.
5 **Q. Now, you've brought with you certain**
6 **handwritten notes; is that correct?**
7 A. Yeah. Yes. A variety of notes.
8 **Q. Could you pull out from what you brought with**
9 **you the handwritten notes you have? And I'm going to**
10 **go through each of them and ask you to give us your**
11 **best recollection of what they are and what they**
12 **signify, if anything.**
13 A. Okay.
14 **Q. If it's all right with you, I'll ask the**
15 **reporter to put exhibit stickers on them and then**
16 **we'll make copies and return your --**
17 A. Okay.
18 **Q. -- either your originals or a clean copy to**
19 **you, whatever you prefer.**
20 A. The originals would be nice.
21 MR. PRESCOTT: All right. Why don't we
22 mark them as a group and we can go through them page
23 by page.
24 MR. WINTER: Can I look at this?
25 MR. PRESCOTT: Sure.

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1 MR. WINTER: Now, what are you going to
2 mark? Are you going to mark the originals or are you
3 going to mark -- since they are going back to the
4 witness you've got -- you already have a set of copies
5 of these, don't you?
6 MR. WINTER: We have a set of copies and
7 I believe they've been produced to you as DL-TX-165209
8 through --
9 MR. WINTER: Through 22?
10 MR. PRESCOTT: 165223.
11 MR. WINTER: 223. Okay. I've got those
12 as well.
13 MR. PRESCOTT: The originals are -- may
14 be -- going to be easier to read than the photocopies
15 that we have.
16 MR. WINTER: And I agree, but just for
17 marking purposes since we are going to deliver the
18 originals back to the witness, it seems like we ought
19 to mark the copy if everybody is agreeable with that.
20 MR. PRESCOTT: If counsel would like we
21 can take a break and I'll go downstairs and get copies
22 made of these.
23 MR. WINTER: Well, yeah. Why don't we
24 take a quick break off the record and figure out what
25 we are going to do here.

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1 THE VIDEOGRAPHER: Stand by.
2 MR. PRESCOTT: Okay. Let's go off the
3 record.
4 THE VIDEOGRAPHER: The time is 9:45 a.m.
5 Off the record.
6 (Recess from 9:45 to 10:12)
7 (Exhibit 881 marked)
8 THE VIDEOGRAPHER: Stand by. The time
9 is 10:12 a.m. We are back on the record.
10 **Q. (BY MR. PRESCOTT) Ms. Jackson, while we were**
11 **off the record I've obtained and provided to counsel**
12 **copies of some handwritten notes that you brought with**
13 **us -- with you this morning and the reporter has**
14 **marked them as Exhibit 881. At the lower right there**
15 **are Numbers 1 through 23.**
16 A. Uh-huh.
17 **Q. And are those numbers that you placed on the**
18 **pages during the break?**
19 A. They are numbers.
20 **Q. Now, could we go through these pages in the**
21 **order they appear and would you tell us what the notes**
22 **on each page refer to?**
23 MR. WINTER: Darrell, before we do that
24 I have another housekeeping question. Excuse me for
25 interrupting the question. Some of these, if I

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1 understood correctly, correspond to materials that
2 you've already produced and Bates labeled. Are you
3 just going to go ahead and re-Bates number all these
4 with new Bates numbers?
5 MR. PRESCOTT: We can do that, although
6 you've got them with the exhibit we've just marked.
7 MR. WINTER: My concern is though that
8 some of them may be -- some of the pages in Exhibit
9 881 may not be identical to or maybe in addition to
10 what you've already Bates numbered. So I'm just
11 trying --
12 MR. PRESCOTT: We -- we provided to you
13 what Ms. Jackson had previously provided to Fleckman &
14 McGlynn, so we can renumber these and reprovide them,
15 if you would like.
16 MR. WINTER: I just thought maybe --
17 MR. PRESCOTT: Depending on how they
18 copy.
19 MR. WINTER: Just start a new series of
20 Bates numbers with Exhibit 881.
21 MR. PRESCOTT: Fine.
22 MR. WINTER: Okay.
23 **Q. (BY MR. PRESCOTT) You have a copy of Exhibit**
24 **881 in front of you.**
25 MR. McDONALD: Darrell, before you get

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1 correct?

2 A. Correct.

3 Q. And Exhibit 230 is the result of that

4 assignment; is that correct?

5 A. Correct.

6 Q. And at that point in time you gathered

7 together as much information as you could regarding

8 federal Medicare and state Medicare; is that correct?

9 Excuse me, state Medicaid.

10 A. Medicare.

11 Q. Federal Medicare and state Medicaid; is that

12 correct?

13 A. August of '93 I don't know if it was

14 Medicaid. Yes. I would say yes.

15 Q. All right. And as of the time that you had

16 prepared the report in August of 1993, you were in the

17 process of trying to obtain information from the

18 various states regarding their formula for

19 reimbursement, am I correct?

20 A. Correct.

21 Q. And you spent quite a deal of time trying to

22 get that information. Would I be fair in that

23 characterization?

24 A. Correct.

25 Q. And then what you did is at some point in

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1 time as of the next report that you prepared, Exhibit

2 231, which is dated February 7th of 1994 --

3 A. February 2nd.

4 Q. February 2nd, 1994, that is a report that you

5 prepared regarding the information you then obtained

6 from the various states, am I correct?

7 A. Correct.

8 Q. And for example, you had information for the

9 state of Florida regarding their reimbursement under

10 Medicaid, am I correct?

11 A. Correct.

12 Q. And you also got information regarding the

13 formula that the state of Texas used for reimbursing

14 under Medicaid; is that correct?

15 A. Correct.

16 Q. And if I looked at Texas you have the

17 reimbursement basis as wholesaler cost plus 12

18 percent; is that correct?

19 A. Yes, that is correct.

20 Q. And that's information that you had gotten

21 based on the directives you had from Dey to collect

22 this information, correct?

23 A. Dey requested me to collect the information.

24 I sent out the form, or what have you, and this is the

25 response.

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1 Q. And as February 2nd, 1994 all the information

2 you got from all of the states regarding their

3 Medicaid reimbursement was sent to distribution, am I

4 correct?

5 A. That is correct.

6 Q. And by distribution, if you would be so kind,

7 if you look at Exhibit 230, there is a list of all the

8 people who got distributed the first memo, Exhibit

9 230, the one in August of 1994, am I correct?

10 A. Correct.

11 Q. And the distribution list includes a variety

12 of people on the sales staff of Dey Labs; is that

13 correct?

14 A. Correct.

15 Q. And in addition to the sales staff it also

16 includes individuals at the Napa office, correct?

17 A. Correct.

18 Q. And that includes Rob Ellis, correct?

19 A. Correct.

20 Q. Bob Mozak, correct?

21 A. Correct.

22 Q. And Bob Pallas, correct?

23 A. Correct.

24 Q. So you had distributed the memo, Exhibit 230,

25 regarding the Medicare update to everybody on the

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1 distribution list that we just discussed, correct?

2 A. That is correct.

3 Q. And that included a variety of the sales

4 force that we've already described, correct?

5 A. Those listed here, yes, that is correct.

6 Q. And you did the same thing with respect to

7 the memorandum that you had prepared on February 2nd

8 of 1994, correct?

9 A. That is correct.

10 Q. And the sales people are the folks who

11 actually sell Dey products to various customers such

12 as drug companies, correct?

13 A. Correct.

14 MR. McDONALD: Object to the form.

15 Q. (BY MR. PITRE) Home healthcare providers,

16 correct?

17 A. Correct.

18 Q. Pharmacies, correct?

19 A. Correct.

20 Q. And those are the same people who apply under

21 the state Medicaid system for reimbursement, correct?

22 A. What do you mean by they are the same people

23 that apply?

24 Q. The -- the drug companies, they are the ones

25 who obtain reimbursement through the state Medicaid